

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DARRELL W. WHEELER, et al.)	
)	
Plaintiff(s),)	No. C 09-1826 BZ
)	
v.)	ORDER GRANTING DEFENDANTS'
)	MOTIONS TO DISMISS
HILO MEDICAL CENTER, et al.,)	
)	
)	
Defendant(s).)	
_____)	

Defendants Hilo Medical Center ("Hilo"), Robert White "White"), Litneutral, LLC ("Litneutral"), and The Queen's Medical Center ("QMC") (collectively "defendants") move to dismiss plaintiff Darrell Wheeler's and plaintiff Pauline Ellis's ("plaintiffs") first amended complaint pursuant to Fed. R. Civ. Proc. 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6).¹ Alternatively, defendants seek a transfer of venue

¹ On September 10, plaintiffs dismissed defendants LitNeutral, LLC and Robert White. The Court interprets this filing as a request for dismissal pursuant to Fed. R. Civ. Proc. Rule 41(a)(2) and **GRANTS** plaintiffs' request. The motions filed by LitNeutral and White are therefore **MOOT** and will not be discussed in this order.

1 pursuant to 28 U.S.C. § 1404(a).²

2 Defendants Hilo and QMC move to dismiss plaintiffs'
3 complaint for lack of personal jurisdiction. To demonstrate
4 that the Northern District of California has personal
5 jurisdiction over Hilo and QMC, plaintiffs need only make a
6 *prima facie* showing. See Caruth v. International
7 Psychoanalytical Ass'n, 59 F.3d 126, 128 (9th Cir. 1995)
8 (stating that, when there has been no evidentiary hearing, "we
9 only inquire into whether [the plaintiff's] pleadings and
10 affidavits make a *prima facie* showing of personal
11 jurisdiction"); see also Pebble Beach Co. v. Caddy, 453 F.3d,
12 1151, 1154 (9th Cir. 2006).³

13 Plaintiffs' complaint alleges that plaintiff Wheeler
14 "received his injuries on [the island of] . . . Hawaii" and
15 that he was thereafter flown from the island of Hawaii to
16 Oahu, where he was "assaulted" by "federal doctors." (P.'s
17 First Amend. Compl. 3:5-11.) Plaintiffs' complaint further
18 alleges that defendant Hilo is a "public entity duly organized
19 under the laws of the state of Hawaii and located in the city
20 of Hilo", and that defendant QMC is also a "public entity duly
21 organized under the laws of the state of Hawaii and located in

22
23 ² Plaintiffs and defendants who have been served have
24 consented to my jurisdiction, including entry of final
judgment, pursuant to 28 U.S.C. § 636(c) for all proceedings.

25 ³ Additionally, "uncontroverted allegations in
26 [plaintiffs'] complaint must be taken as true, and conflicts
between the facts contained in the parties' affidavits must be
27 resolved in [plaintiffs'] favor." Rio Props., Inc. v. Rio
28 Int'l Interlink, 284 F.3d 1007, 1019 (9th Cir. 2002); see also
Pebble Beach, 453 F.3d at 1154 ("[F]or the purpose of this
[prima facie] demonstration, the court resolves all disputed
facts in favor of the plaintiff.").

1 Oahu." (P's Comp. 4:12-15, 6:5-9.) Plaintiffs' pleadings
2 contain no other allegations concerning Hilo's or QMC's
3 connections with California, nor do plaintiffs aver that any
4 of these defendants are residents of California.

5 Due process requires that a nonresident defendant have
6 certain minimum contacts with the forum state so that the
7 exercise of jurisdiction does not offend traditional notions
8 of fair play and substantial justice. Int'l Shoe Co. v.
9 Wash., 326 U.S. 310, 316 (1945). In order to maintain their
10 claims against Hilo and QMC in this district, plaintiffs must
11 make a *prima facie* showing that these defendants are subject
12 to either specific or general jurisdiction. See Burger King
13 v. Rudzewicz, 471 U.S. 462, 475-76 (1985).

14 "If the defendant's activities in the forum are
15 substantial, continuous and systematic, general jurisdiction
16 is available." Doe v. Unocal Corp., 248 F.3d 915, 923 (9th
17 Cir. 2001). "General jurisdiction refers to jurisdiction to
18 adjudicate claims that do not arise from the defendant's
19 contacts with the forum state." 16-108 Moore's Fed. Prac.
20 Civ. § 108.40. Thus, if a defendant is subject to general
21 jurisdiction in a state, the state may exercise jurisdiction
22 over the defendant based on any claim, including claims
23 unrelated to the defendant's contacts with the state. Id.;
24 see also Synopsys, Inc. v. Ricoh Co., Ltd., 343 F. Supp. 2d
25 883, 886 (N.D. Cal. 2003). The test for general jurisdiction
26 was recently summarized by the Ninth Circuit:

27 For general jurisdiction to exist over a nonresident
28 defendant . . . , the defendant must engage in "continuous
and systematic general business contacts" that

1 "approximate physical presence" in the forum state. This
2 is an exacting standard, as it should be, because a
3 finding of general jurisdiction permits a defendant to be
4 haled into court in the forum state to answer for any of
5 its activities anywhere in the world.

6 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801
7 (9th Cir. 2004); see also International Shoe Co. v.
8 Washington, 326 U.S. 310, 318 (1945).

9 The Ninth Circuit has stated that, when a court takes on
10 the issue of general jurisdiction, "[f]actors to be taken into
11 consideration are whether the defendant makes sales, solicits
12 or engages in business in the state, serves the state's
13 markets, designates an agent for service of process, holds a
14 license, or is incorporated there." Bancroft & Masters, Inc.
15 v. Augusta Nat'l, Inc., 223 F.3d 1082, 1086 (9th Cir. 2000).

16 Plaintiffs offered no evidence and failed to plead facts
17 demonstrating that Hilo or QMC make sales, solicit or engage
18 in business, or otherwise serve the markets in the Northern
19 District of California. There are also no allegations that
20 these defendants engage in "continuous and systematic general
21 business contacts" in this district. The Court therefore
22 finds that plaintiffs have not made a *prima facie* showing of
23 general jurisdiction.

24 Because there is no general jurisdiction over Hilo or
25 QMC, the Court turns to the issue of specific jurisdiction.
26 The Ninth Circuit employs a three-prong test to determine
27 whether a party has sufficient minimum contacts to be
28 susceptible to specific personal jurisdiction: (1) the
nonresident defendant must purposefully direct his activities
or consummate some transaction with the forum or resident

1 thereof; or perform some act by which he purposefully avails
2 himself of the privilege of conducting activities in the
3 forum, thereby invoking the benefits and protections of its
4 laws; (2) the claim must be one which arises out of or relates
5 to the defendant's forum-related activities; and (3) the
6 exercise of jurisdiction must comport with fair play and
7 substantial justice, *i.e.* it must be reasonable.

8 Schwarzenegger, 374 F.3d 797, 802 (9th Cir. 2004) (quoting
9 Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987)).

10 In order to satisfy the first prong of the "minimum
11 contacts" test, plaintiffs must establish either that Hilo and
12 QMC (1) purposefully availed themselves of the privilege of
13 conducting activities in California, or (2) that they
14 purposefully directed their activities toward California.

15 Here, plaintiffs failed to allege facts or submit any
16 evidence to establish that this Court has specific personal
17 jurisdiction over Hilo or QMC under the first prong of the
18 "minimum contacts" test.⁴ Plaintiffs failed to identify any
19 conduct by these two defendants that took place in California
20 that adequately supports the availment concept.⁵ There are
21 also no allegations that these defendants committed
22 intentional acts that were expressly aimed at California, or
23 that caused harm, the brunt of which was suffered (and which

24 ⁴ "If any of the three requirements is not satisfied,
25 jurisdiction in the forum would deprive the defendant of due
26 process of law." Omeluk v. Langsten Slip & Batbyggeri A/S, 52
27 F.3d 267, 270 (9th Cir. 1995).

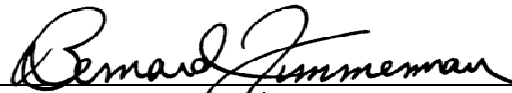
28 ⁵ Evidence of availment is typically action taking
place in the forum that invokes the benefits and protections of
the laws in the forum. Schwarzenegger, 374 F.3d at 803.

1 the defendant knew was likely to be suffered) in the forum
2 state. See Bancroft, 223 F.3d at 1087; Calder v. Jones, 465
3 U.S. 783 (1983). As previously noted, plaintiffs complaint
4 avers that the allegedly tortious activities for which
5 plaintiffs seek relief all occurred in Hawaii and were
6 committed by Hawaiian entities.

7 Accordingly, because plaintiffs have not made a *prima*
8 *facie* case showing that the Court has either general or
9 specific personal jurisdiction over defendants Hilo or QMC,
10 plaintiffs' complaint is **DISMISSED** as to these defendants.

11 The Court finds no need for argument and therefore
12 **VACATES** the hearing presently scheduled for September 23,
13 2009. The Court will shortly issue an order addressing the
14 remaining defendants.

15 Dated: September 11, 2009

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18 Bernard Zimmerman
19 United States Magistrate Judge

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